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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

No. .....

IN THE MATTER OF

DR. JOANNA ALOGDELIS,

Petitioner,

against

BROOKLYN COLLEGE OF THE CITY UNIVERSITY OF NEW YORK, BOARD OF HIGHER EDUCATION, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, JOHN W. KNELLER, HARRY G. ALBAUM and ARTHUR H. KAHN,

Respondents,

For Judgment Under CPLR Article 78.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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TABLE OF CONTENTS

	PAGE
Facts	2
ARGUMENT—Not even the semblance of a constitutional issue is presented	5
CONCLUSION	6

Statute Cited

N. Y. City Administrative Code, §20-43.0	6

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Petitioner seeks to have this Court review by writ of certiorari a judgment of the Appellate Division of the State of New York, Second Department, entered on May 25, 1972, which unanimously sustained a determination recommending that petitioner be retired for disability. Reported: 39 A D 2d 728, 332 N. Y. S. 2d 414.

On July 7, 1972, the Court of Appeals of the State of New York denied petitioner leave to appeal.

Facts

Petitioner became a member of the faculty of Brooklyn College, City University of New York, in 1947, reaching the rank of Assistant Professor in 1949 (R. 39a). She never attained promotion to a higher rank (R. 39a-41a, 56a).

In 1965, she began to present demands to members of the school administration that she be promoted, retroactively to 1949, to the rank of Full Professor, skipping the rank of Associate Professor (R. 40a, 55a). Her demands were to eventually total 2,000 written pages (R. 41a, 28-29). In these documents she accused members of the school administration of corruption and made other personal attacks upon them (R. 42a, 106-107, 109, 117).

The culmination of all this was reached during a class on September 14, 1970, when petitioner asked her students to respond to a series of questions, of which the following are examples (R. 42a-44a, 65-66, 71, 77):

> "What would your position be if you knew the president of the college you were attending like the sneak thief and the base robber that he is devicively took the dastardly administrative action of granting that deserving faculty member absolutely nothing at the final promotion meetings of P & B on Wednesday, October 22, 1969, and that dastardly administrative presidential action was taken without one scintilla of evidence against that deserving faculty member, and the dastardly administrative presidential action was taken in open defiance of the department chairman who had recommended that faculty member, and three, that dastardly administrative presidential act was taken in open defiance of the Dean of the Faculties who had recommended

that faculty member, and five, that dastardly administrative presidential action was taken in open defiance of the past acting president of Brooklyn College of the City University of New York who had recommended that faculty member?

* * *

What would your position be if you knew the president of the college you were attending was so thoroughly teacherous and so completely corrupt and so undisputably irresponsible that he sneakingly surveilled [sic] every single piece of mail that faculty member sent out and received, and this after that faculty member had gotten FBI clearance from the Securities Office of the college?

* * *

What would your position be if you knew the president of the college you were attending was so thoroughly unprincipled and so completely corrupt and so sexually deranged that he viciously hired indigenous spies in that faculty member's place of residence to make sexual passes at that faculty member and thereby not only wrongly and unjustly invading the privacy of that faculty member but unmistakingly harassing that faculty member in her place of residence?"

Examples of other such questions are found on pages 62-79 of the Record.

This resulted in petitioner's being suspended on charges calling for her dismissal because of conduct unbecoming a member of the instructional staff (R. 44a, 60a, 61a). The charges involved both her correspondence with administration members as well as her classroom assignment of September 14, 1970.

Hearings on the charges were held on September 24 and September 29, 1970 (R. 44a-45a). Petitioner expressly stated that she desired no legal representation (R. 4-5). At the September 24th hearing, she was permitted to speak at length (R. 8-87). We refer the Court to her statements at this hearing as evidence of her mental illness (*id.*).

Because petitioner was obviously mentally ill, the trial committee, with the help of petitioner's brother-in-law, worked out a solution whereby the charges were dropped in return for petitioner's applying for a medical leave of absence for the rest of the semester (R. 46a, 166-185). In applying for the leave, petitioner submitted a letter from a neurologist and psychiatrist which spoke of her "emotional upset" and "nervous condition" (R. 46a, 184).

Subsequently, in accordance with the By-laws of the Board of Higher Education, petitioner was examined both by a physician employed by the Board and by a physician acceptable both to the Board and to petitioner's physician, in order to determine her fitness to return to duty (R. 47a-49a). Both physicians found her mentally ill (R. 190, 192).

In accordance with the Board's By-laws, she was asked to apply for an additional medical leave of absence (R. 49a, 193). She refused (R. 49a, 194). Because of this refusal, the Board's By-laws dictated that she be tried on charges of neglect of duty (R. 50a, 195-199, 206).

Petitioner failed to attend the hearings on the neglect of duty charge, but her brother and brother-in-law appeared (R. 50a, 201, 208). The trial committee suggested that they apply for an additional medical leave of absence on her behalf by either [a] obtaining petitioner's authorization or [b] having a court appoint them her legal

guardians (R. 222, 228-233, 243-244). The case was adjourned so that her bother and brother-in-law could explore these possibilities (R. 230, 241-242, 246, 248, 252-253).

On the adjourned date, neither petitioner nor members of her family appeared (R. 248-253). In the interim, the trial committee received no word from petitioner's brother and brother-in-law (R. 250). The committee put into evidence some 600 pages of material sent by petitioner to the Chancellor of the University (R. 249-252, 254-867). We refer the Court to this material as further proof of petitioner's mental illness.

The neglect of duty charge was sustained (R. 868-869). Petitioner could have been dismissed; instead, it was recommended that she be retired for disability (R. 869-870).

ARGUMENT

Not even the semblance of a constitutional issue is presented.

There is no issue of academic freedom. The charges concerning petitioner's classroom assignment and her correspondence with administration members were dropped. Even if these charges had been pressed and petitioner had been found guilty, academic freedom would still not be an issue. There is a limit to how far a teacher can vent her spleen because of failure to be promoted.

The charges were dropped because it was evident that petitioner was mentally ill. In return, she agreed to apply for a medical leave of absence. As is evident from the physician's letter attached to her application, she knew she was applying for a leave of absence because of mental illness (R. 184).

She has not been permitted to return to duty because physicians, authorized to examine her, have found that her mental illness has continued. Under these circumstances, she was required to apply for a further leave of absence. She has refused. The Board could have dismissed her for neglect of duty because of this refusal. Instead, it sought to find a solution least damaging to her. It recommended that she be retired for disability. Upon such retirement, petitioner would not only receive a pension but would have the possibility of returning to teaching duty if a re-examination disclosed that she has recovered from her illness. N. Y. City Administrative Code, §B20-43.0.

CONCLUSION

The petition for certiorari should be denied, with costs.

September 1, 1972.

Respectfully submitted,

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STANLEY BUCHSBAUM,
ERIC J. BYRNE,
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